

**EMPLOYMENT STANDARDS TRIBUNAL**  
In the matter of an appeal pursuant to Section 112 of the  
*Employment Standards Act*, R.S.B.C. 1996, C. 113

- By -

Task Force Building Services Inc.  
("Task Force" or the "Employer")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

<b>ADJUDICATOR:</b>	Ib S. Petersen
<b>FILE NO.:</b>	97/795
<b>DATE OF HEARING:</b>	January 22, 1998
<b>DATE OF DECISION:</b>	February 3, 1998

## DECISION

### APPEARANCES

Mr. Tom Stefano

Mr. Mohammed Munif            on behalf of Task Force

Mr. John Motiuk

Ms. Eva Filip

Ms. Vladislav Filip                    on behalf of the complainant (Appellant)

Mr. Pavel Krkoska

interpreter

### OVERVIEW

This is an appeal by the complainant pursuant to Section 112 of the *Employment Standards Act* (the “Act”), against a Determination of the Director of Employment Standards (the “Director”) issued on October 15, 1997 . In the Determination, the Director’s Delegate found that Ms. Eva Filip was not constructively dismissed from her employment and, therefore, not entitled to compensation pay for length of service. Ms. Filip maintains that she was constructively dismissed.

### ISSUE TO BE DECIDED

The issue to be decided in this appeal is whether Ms. Filip was constructively dismissed.

### FACTS

Ms. Filip worked as building service worker at a medical building in New Westminster since February of 1989. Since 1992, she was employed by the Employer, which took over the contract for the maintenance of the building from Ms. Filip’s previous employer.

It was clear from the evidence of Ms. Filip was that she had a difficult relationship with Mr. Munif, who initially was her direct supervisor. After some time, Mr. Feroz became her supervisor. Ms. Filip testified that she had worked without complaint from the tenants, mostly physicians, that Mr. Munif had increased the work load by 35-40 per cent and cut her hours from six to five per day over the last two years, that he inspected her work excessively; and that he intimidated and harassed her. Ms. Filip’s husband testified that Ms. Filip came home from work crying and nervous, complaining about work and Mr. Munif.

The witnesses for the Employer testified that it had received complaints from tenants with respect to Ms. Filip's work (through the building's management company). It was not disputed that Ms. Filip had not seen the particular written complaints presented by the Employer the hearing. The Employer agreed that some of the suites referred to in the complaints were not cleaned by Ms. Filip. The Employer's evidence was that complaints were communicated to Ms. Filip. The Employer's evidence was that the "squarefootage" that Ms. Filip was responsible for had decreased neither her work hours nor her pay had been reduced. Payroll records supported that. Mr. Munif worked with Ms. Filip for some six months after the Employer took over the contract. He testified that the work day was always 5:00 to 10:00 p.m., never six hours.

On May 15, 1997, Ms. Filip had an accident on the job. She stuck her finger on a needle in a garbage bag at a medical laboratory. She informed Mr. Feroz immediately following the incident and left a note for Mr. Munif. Ms. Filip sought emergency treatment and was hospitalized at least until May 20. On May 16, Mr. Filip telephoned Mr. Munif to inform him that Ms. Filip was in the hospital and would not be able to report for work. Ms. Filip subsequently applied for workers' compensation and received wage loss benefits until June 23, 1997.

On May 18, 1997, Ms. Filip filed a complaint with the "Labour Relations Board", complaining about the alleged harassment. In the letter she states, among others, "I have attempted several times to leave by applying at various employers for similar positions."

On May 20, 1997, Ms. Filip and her husband attended the work place. Her evidence was that she came to pick up her pay check for the previous two weeks. She stated that Mr. Munif would not pay her unless she provided a written notice of resignation. Ms. Filip's evidence was that she "then decided to quit" and that her husband had told her not go back because of Mr. Munif's alleged harassment.

Mr. Munif's evidence was as follows. He did not talk to Ms. Filip between May 15 and May 20. Ms. Filip telephoned him on May 20 and told him that she "was not going to work for me anymore". He asked her for notice in writing so he could inform his bookkeeper and asked her to come in that day to return a parking decal. She did, in fact bring and return the decal. They met on the third floor in the building in the presence of Mr. Feroz. Ms. Filip again stated that she was not going to work for him. Mr. Filip stated that Ms. Filip was not going to give him a letter "as long as she was on "combo"." Mr. Munif mailed a separation slip to Ms. Filip. It was returned because it was mailed to the wrong address but Mr. Stefanou subsequently hand delivered it to Ms. Filip.

## ANALYSIS

Section 66 of the *Act* provides:

66. If a condition of employment is substantially altered, the director may determine that the employment of an employee has been terminated.

“Conditions of employment” are broadly defined in Section 1 of the Act to mean “all matters and circumstances that in any way affect the employment relationship of employers and employees.” Clearly it is not all changes that will constitute constructive dismissal. Under the statute, the change must be “substantial.” The change “must be sufficiently material that it could be described as being a fundamental change in the employment relationship” (*Helliker*, BCEST #D347/97, reconsideration of BCEST #D357/96). The test is an objective one to ascertain whether a substantial change has occurred. I agree with my colleague in *Helliker*, above, that such a test includes an analysis of the nature of the employment relationship, the conditions of employment, the alterations which have been made, the legitimate expectations of the parties, and whether there are any express or implied agreements or understandings. In my view, harassment may be a matter that affect the employment relationship.

I have no difficulty accepting that the relationship between Ms. Filip and the Employer was a difficult one. The Employer was not satisfied with her performance. I accept that the Employer was pleased when Ms. Filip did not return to work after May 15, 1997. Nevertheless, I am not satisfied that the Employer terminated her employment, constructively or otherwise. First, there was no credible evidence supporting Ms. Filip’s allegation that her work load had been increased and her hours reduced. Payroll records for 1996/97 do not support that she worked more than five hours per day. Nor did she substantiate that her work load had increased as alleged by her. Second, I find that the harassment allegations were lacking in particulars. Ms. Filip testified that at one point it took her 3 to 4 months to get a vacuum cleaner repaired which, even if true, in the circumstances, in my view was a trivial matter. The Employer denied this. She complained about having been laid off in 1994 due to shortage of work. She mentioned that another employee and Mr. Munif had been screaming at her. There was no evidence of the context in which this occurred. Moreover, she alleged that Mr. Munif had entered the building after she had finished and left dirt that she would get the blame for. There was no evidence that Mr. Munif had done that. In short, Ms. Filip did not provide sufficient evidence to substantiate the harassment allegations.

In my view, Ms. Filip decided between May 15 and May 20, 1997 to bring the employment relationship to an end. Her complaint to the “Labour Relations Board” on May 18, before she spoke with Mr. Munif on May 20, in my view, supports a finding that she had made up her mind not to return to work. Ms. Filip did not dispute that she attended the work place to return the parking decal on May 20. Moreover, she did not testify that Mr. Munif told her that she was fired (or words to that effect). She stated that he asked for a notice in writing. Her evidence was that

“then (she) decided to quit”. Mr. Munif’s account of the meeting was quite detailed. Considering all of the circumstances, I accept the testimony of Mr. Munif that Ms. Filip told him that she did not wish to return.

In the result, I find that Ms. Filip was not constructively dismissed.

**ORDER**

Pursuant to Section 115 of the *Act*, I order that the Determination in this matter, dated October 15, 1997 be confirmed.

**Ib Skov Petersen**  
**Adjudicator**  
**Employment Standards Tribunal**